Supreme Court, U.S.
FILED

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No. 95-OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

CHRISTINA BELL CONNORS,

Petitioner,

v.

THE STERLING MILK COMPANY AND
WES TRIMBLE, ADMINISTRATOR,
OHIO BUREAU OF WORKERS' COMPENSATION,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Ohio

---

PETITION FOR WRIT OF CERTIORARI

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PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. 1-800-347-8208

QUESTIONS PRESENTED

1. Whether a state workers' compensation statute which treats as compensable psychological conditions which arise of physical injury sustained in the course of employment, but which prohibits the payment of compensation for identical conditions which arise out of severe emotional or psychological stress to which an employee was subjected in the course of employment denies equal protection of the law in violation of the Fourteenth Amendment.

2. Whether a state workers' compensation statute which denies a hearing on the merits to all persons alleging work-induced psychological harm in the absence of prior physical injury denies due process of law.

PARTIES

Petitioner:	Christina Bell Connors
Respondents:	The Sterling Milk Company - There is no parent or subsidiary company
	Wes Trimble, Administrator Bureau of Workers' Compensation

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JURISDICTION

The Ohio Supreme Court entered judgment in this matter on May 3, 1995. A timely motion for reconsideration of such judgment was denied pursuant to an order entered June 14, 1995. This petition was filed within ninety days following the entry of the final judgment of the court below. The jurisdiction of this court is invoked pursuant to 28 U.S.C. *sec.* 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment XIV, section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ohio Revised Code *sec.* 4123.01(C):

"Injury" includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment. "Injury does not include:

1. Psychiatric conditions except where the conditions have arisen from an injury or occupational disease;

2.Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;

3.Injury or disability incurred in voluntary participation in an employer sponsored recreation or fitness activity if the employee signs a waiver of his right to compensation or benefits under Chapter 4123. of the Revised Code prior to engaging in the recreation or fitness activity.

STATEMENT OF THE CASE

Respondent Sterling Milk Company operates a chain of

convenience stores throughout northwest Ohio and southeast Michigan. Petitioner Christina Bell Connors was employed by Sterling Milk Company at its retail store located in the town of Napoleon, Ohio. On the morning of February 18, 1991, petitioner was working alone in the store when, at approximately 6:30 a.m., a man wearing a mask and carrying a gun entered the store. Petitioner was ordered, at gunpoint, to accompany this individual out of the store through the back door into an alley immediately behind the store. There, he forced the petitioner to perform oral sex on him. After this assault, the assailant fled the scene, leaving petitioner alone in the alley. Petitioner went back inside the store, locked the doors and summoned police.

As a direct result of this experience, petitioner has experienced flashbacks, crying spells and various other signs of psychiatric and emotional injury. Although she initially attempted to remain on the job and deal with the psychiatric sequelae of the assault on her own, she was ultimately required to undergo inpatient psychiatric treatment in June of 1991, and to seek outpatient psychological counselling. She has been medically diagnosed as suffering from depression and post-traumatic stress disorder, both as a direct result of the abduction and assault to which she was subjected in the course of her employment.

Petitioner filed an application for payment of her medical expenses and compensation for time lost from work with the Respondent Administrator, Ohio Bureau of Workers' Compensation. This application was denied in administrative proceedings before the Industrial Commission of Ohio. At each stage of the administrative process, the claim was denied based on the provisions of Ohio Revised Code *sec.* 4123.01 (C)(1). Petitioner thereafter filed a timely appeal to the Common Pleas

Court of Henry County, Ohio, pursuant to provisions of the Ohio workers' compensation act, and perfected that appeal by filing a complaint setting forth the basis for her claim.

Respondent Administrator, Ohio Bureau of Workers' Compensation, moved the trial court to dismiss the petitioner's complaint for failure to state a claim upon which relief could be granted. The Administrator contended that, taking all of the facts alleged as true, the absence of a compensable physical injury precluded the consideration of petitioners' claim for psychological injury received in the course of and arising out of employment. This argument was based specifically on the language of Ohio Revised Code *sec.* 4123.01 (C)(1), which expressly provides that "injury" does not include psychiatric conditions "except where the conditions have arisen from an injury or occupational disease." Respondent Sterling Milk Company joined in the Administrator's motion to dismiss petitioner's appeal and complaint.

Petitioner timely responded to the motion to dismiss, arguing in her memorandum in opposition to such motion that Ohio Revised Code *sec.* 4123.01(C)(1) is unconstitutional. In addition to raising certain arguments based on the Ohio Constitution, petitioner specifically asserted that the statute in question violates the equal protection and due process clauses of the United States Constitution. The trial court rejected all of petitioner's constitutional challenges, including her arguments based on the United States Constitution, holding that the state's interest in preserving the viability of its workers' compensation program and maintaining employers' premium costs for such program at suitable levels was a sufficient reason for legislative classification of psychological injuries not derived from physical injury as noncompensable. The trial court also found that there was no due process violation in summarily

dismissing all such complaints without determining whether the conditions alleged were in fact incurred in the course of and arising out of employment.

Petitioner appealed from the judgment of the trial court to the Third District Court of Appeals, raising assignments of error which included claims that the trial court erred in failing to find the statute in question unconstitutional under the equal protection and due process clauses of the Fourteenth Amendment. On or about November 4, 1993, the court of appeals entered judgment affirming the judgment of the trial court. Appeal was then timely instituted to the Ohio Supreme Court. In her Memorandum in Support of Jurisdiction, petitioner asserted that her appeal should be heard by the Ohio Supreme Court as a matter of right, because such appeal involved substantial constitutional questions arising under the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, as well as under various provisions of the Ohio Constitution. On March 30, 1994, the Ohio Supreme Court journalized its order allowing petitioner's motion to certify and claimed appeal as of right. Thereafter, the matter was briefed on the merits by all of the parties, as well as numerous *amicus curiae*, and oral argument was heard on or about March 21, 1995. On May 3, 1995, the Ohio Supreme Court entered an order dismissing petitioner's *appeal, sua sponte,* on the grounds that the same had been improvidently allowed. Petitioner filed a motion for reconsideration of that order, which was denied in an order entered on June 14, 1995.

REASONS FOR GRANTING THE WRIT

1. OHIO REVISED CODE *SEC.* 4123.01(C)(1) DENIES EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTEENTH AMENDMENT, IN THAT IT PROVIDES WORKERS 'COMPENSATION PROTECTION TO PERSONS WHO SUFFER PSYCHIATRIC INJURY AS A RESULT OF WORK RELATED PHYSICAL INJURY, BUT DENIES THAT PROTECTION TO PERSONS SUFFERING DEMONSTRABLY WORK-RELATED PSYCHIATRIC INJURY AS A RESULT OF SEVERE EMOTIONAL STRESS TO WHICH THEY WERE SUBJECTED IN THE COURSE OF AND ARISING OUT OF EMPLOYMENT.

It is a cardinal tenet of constitutional law that legislative enactments may not deny equal protection of the laws. The Fourteenth Amendment specifically provides that no state shall deny the equal protection of the laws to any person within its jurisdiction. While this does not preclude legislation which creates classifications among citizens, it does require that such classifications have a rational basis, and be consistent with legitimate legislative objectives. *Schweiker v. Wilson,* 450 U.S. 221 (1981); *Trimble v. Gordon,* 430 U.S. 762 (1977); *Logan v. Zimmerman,* 455 U.S. 444 (1981). Petitioner respectfully submits that the Ohio statute here in question violates the equal protection clause of the Fourteenth Amendment in that it prescribes different legal treatment to two classes of persons suffering identical work-related psychiatric conditions, in the absence of any rational basis for the disparate treatment.

As is apparent from the language of the statute, the

Ohio workers' compensation scheme does not seek to exclude from compensability all psychiatric conditions. Instead, the legislation explicitly provides that a psychiatric condition which arises from a physical injury or occupational disease is an "injury" within the meaning of the workers' compensation act. Thus, thousands of Ohio workers can, and do, receive disability compensation and medical benefits for precisely the same psychiatric conditions for which petitioner was denied compensation. The sole basis for this disparity is that petitioner's psychiatric injuries resulted directly and primarily from the emotional stress precipitated by her work-related abduction and assault, rather than arising as a secondary consequence of some physical injury suffered in the assault.

However difficult it may be to discern a rational basis for a legislative classification that determines the compensability of allegedly work-related psychiatric conditions on the basis of whether such conditions were produced by some separate and independently compensable physical injury, the problem becomes even more egregious when one considers that Ohio law recognizes that compensation may be awarded to a worker who suffers a physical illness or injury as the result of extraordinary mental or emotional stress received in the course of and arising out of employment. In *Ryan v. Connor,* 28 Ohio St. 3d 406 (1986), the Ohio Supreme court held that the definition of "injury" contained in Ohio Revised Code *sec.* 4123.01 (C) includes physical injury occasioned solely by extraordinary mental or emotional stress, even though no physically traumatic incident took place. It must be clearly understood that the petitioner herein has no claim to workers' compensation protection under the statute here in question, even though:

1. the incident to which she was subjected in the course

of and arising out of her employment unquestionably involved extraordinary mental and emotional stress, and would therefore have supported a compensable claim had she suffered a physical illness as a result; and

2. the conditions she sustained as a result of the incident are conditions which have long been recognized as compensable "injuries" when they arise secondary to physical damage sustained on the job.

Simply put, petitioner experienced an incident which is clearly of a compensable character, and as a direct and proximate result thereof sustained psychiatric injuries of a clearly compensable character. The application of the challenged statute to this combination of a compensable incident and a compensable medical condition, however, leads to the conclusion that the petitioner is prohibited from receiving compensation or medical benefits. This so solely because of a legislative classification which irrationally classifies psychiatric injuries on the basis of their connection to physical injury, rather than their connection to the events, activities or conditions of the employment.

Petitioner recognizes that an equal protection violation is not shown merely by establishing the existence of a legislative classification which treats two groups of people differently. To find a legislative classification constitutionally infirm, it must be shown that the classification is not rationally related to the accomplishment of a legitimate governmental interest. Throughout the course of the state court proceedings, Respondents have maintained, and the Ohio courts have held, that the Ohio legislature has a legitimate interest in maintaining the self-supporting nature of the workers' compensation program, distributing available resources in such a manner as to adequately compensate covered disabilities, and maintaining

premium contribution rates that will not unduly burden employers. That a state has a legitimate interest in maintaining a sound workers' compensation program can scarcely be disputed. It does not follow from that premise, however, that any legislative classification which limits or denies eligibility for compensation is necessarily valid on equal protection grounds merely because it has the effect of limiting the number of potential claimants and thus holding down the costs of the program.

This Court has previously observed that the reasonableness of a statutory classification is dependent upon the purpose of the legislative scheme of which it is a part. *Carrington v. Rash,* 380 U.S. 89 (1964); *McLaughlin v. Florida,* 376 U.S. 184 (1965). In this connection, it is appropriate to note that the Ohio Constitution, Article II, Section 35, expressly provides that the General Assembly is empowered to enact workers' compensation laws "For the purpose of providing compensation to workmen and their dependents, for death, injuries, or occupational disease occasioned in the course of such workmen's employment..." On the facts of this case, it could not be more clear that petitioner suffers from psychiatric injuries which were "occasioned in the course of {her} employment." Notwithstanding that uncontroverted fact, she has been denied compensation from the very program set up to compensate such injuries, because her psychiatric injuries resulted from the emotional devastation of her attack.

Respondents have sought below to justify the arbitrary exclusion of all psychiatric conditions not caused by physical injury on the basis such conditions are easy to feign, and that it is difficult to diagnose and determine the causes of such conditions. Thus, it is argued that the exclusion of psychiatric

claims furthers the state's legitimate interest in maintaining a sound workers' compensation system by preventing it from being over taxed by myriad meritless claims. The presence of a physical injury, according to this view, lends a greater degree of veracity and verifiability to claims of psychiatric injury.

The lack of rationality in this approach is readily illustrated when one considers that under this statute, a worker who sustained a soft tissue back sprain several years before experiencing an episode of depression is entitled to a hearing to determine whether the remote onset of psychiatric symptoms years after a seemingly minor physical injury is in fact causally related to the original work-related physical injury. The statute which this court is asked to review, however, presupposes that the claim of a young woman for depression and post traumatic stress disorder immediately following being confronted at gunpoint by a masked assailant at her place of employment, and then abducted and sexually assaulted, is less verifiable than the claim of the worker who alleges that he has become depressed as a result of a muscle strain he suffered years prior to the onset of psychological symptoms.

Petitioner respectfully submits that there is no rational basis for the legislative classification of claimed work-related psychiatric injuries on the basis of whether there was a physical injury preceding the psychiatric injury. On the facts here presented, it is plainly absurd to suggest that the claim of psychiatric injury is incapable of verification, or that the cause of petitioner's condition is so mysterious as to be incapable of proof to a reasonable degree of medical probability. Indeed, it is noteworthy that among the *amicus curiae* briefs submitted to the court below was a brief offered by the Ohio Psychological Association, pointing out that there is no scientific basis for the legislative assumption that the merits of a claimed work-related

psychiatric injury cannot be established in the absence of some "authenticating" physical injury.

Moreover, the classification created by Ohio Revised Code *sec.* 4123.01 (C)(1) cannot be said to be **rationally** related to the admittedly legitimate state interests in maintaining a sound workers' compensation program and avoiding the payment of spurious claims. To the extent that the reasonableness of a classification is a function of the objectives sought to be served by the overall legislative scheme, a classification which seeks to preserve the workers' compensation fund by prohibiting the disbursement of its benefits to claimants who, beyond question, are suffering from injuries sustained in the course of and arising out of employment patently lacks rationality.

The Fourteenth Amendment prohibits any state from denying the equal protection of the laws to any person within its jurisdiction. In the case at bar, the Ohio General Assembly has violated that prohibition by enacting a statute which prohibits the payment of medical or disability benefits under the workers' compensation act to one class of claimants suffering from work related psychiatric injury, while allowing those benefits to another class suffering from exactly the same conditions, on the basis of a classification criterion -the presence of prior physical injury- which bears no rational relationship to the determination of whether the condition for which compensation is sought was in fact sustained in the course of employment. While no one can argue with the proposition that a workers' compensation system should not be plagued with spurious claims, the legislative presumption that all claims of psychiatric injury not derivative from prior physical injury are spurious is, as the facts of this claim tragically attest, blatantly irrational.

2. OHIO REVISED CODE SECTION 4123.01(C)(1) DENIES PETITIONER DUE PROCESS OF LAW IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, IN THAT IT CREATES A CONCLUSIVE PRESUMPTION AGAINST THE VALIDITY OF ALL CLAIMS ALLEGING PSYCHIATRIC INJURY AS A RESULT OF MENTAL AND EMOTIONAL STRESS RECEIVED IN THE COURSE OF AND ARISING OUT OF EMPLOYMENT, THEREBY COMPELLING THE DISMISSAL OF PETITIONER'S CLAIM WITHOUT CONSIDERATION OF THE MERITS.

As noted above, the application of the statute in question to the facts of this cause resulted in the dismissal of petitioner's claim for failure to state a claim upon which relief could be granted. Thus, it is clear that this statute forecloses hearing on the merits of petitioner's allegation that her medically diagnosed depression and post-traumatic stress disorder resulted from the emotionally traumatic events to which she was subjected in the course of and arising out of her employment. Throughout the course of proceedings in the state courts, Respondents sought to defend the statute in substantial part on the ground that it furthered the state's interests in assuring that only meritorious claims are compensated, and that it avoided the consumption of time and resources which consideration of such claims would entail.

Implicit in this argument is the assumption that all claims of work-related psychiatric injury not arising out of physical injury are non-meritorious. Viewed in its most benign light, the policy judgment underlying this legislation is that the risk of compensating non-meritorious claims is so great as to

justify the refusal to even consider the merits of any psychiatric claim that is not derivative from a compensable physical condition. The conclusion therefore emerges inescapably that Ohio Revised Code *sec.* 4123.01(C)(1) is, in purpose and effect, an irrebuttable presumption against the validity of all claims of work-related psychiatric injury in the absence of compensable physical harm.

Petitioner does not dispute that the State of Ohio has a legitimate interest in assuring that only those claimants suffering from conditions "occasioned in the course of such workmen's employment" are compensated from the workers' compensation fund. This Court has repeatedly recognized, however, that the mere tendency of a conclusive presumption to further a legitimate state interest is not necessarily sufficient to insulate such a presumption from due process invalidation.

In *Stanley v. Illinois,* 405 U.S. 645 (1972), this Court invalidated an Illinois child custody statute which permitted the state to deny custody to unwed fathers without any showing of parental unfitness. Recognizing that the state had legitimate interests not only in seeking to protect minors from unfit parents, but in expeditiously and economically determining custody matters, the Court nonetheless held that the conclusive presumption that all unwed fathers were unfit to enjoy custody could not bear scrutiny under the due process clause. Because the Illinois statute at issue in *Stanley* denied Mr. Stanley any opportunity to contest the state's decision to deny him custody of his children, and because Stanley, if given the opportunity to make his case, may have been able to show he was deserving of custody, the statute was struck down as a denial of due process.

In a similar vein, the Court in *Vlandis v. Kline,* 412 U.S. 441 (1973) considered a due process challenge to a

Connecticut statute prescribing the method of determining residency of state university students for purposes of in-state tuition eligibility. This statute in essence provided that if a student was not a resident of the state at the time of initial application to the state university, then the student would be deemed a non-resident for the duration of attendance at the university. This statute was challenged by two students who, after applying for admission to state supported universities in Connecticut, moved to that state. The Court recognized that a state has a legitimate interest in preserving the quality of its colleges and universities, as well as in protecting the right of its *bona fide* residents to attend state supported institutions on a preferential tuition basis. Those interests, however, did not permit the state to create an irrebuttable presumption of non-resident status to deny an individual any opportunity to present evidence that he or she had become a *bona fide* resident . The Court noted that an irrebuttable presumption could not be used in such matters, where the presumption is not necessarily or universally true, and the state has available reasonable alternative means of making the pertinent factual determination.

It is significant that while the private interests impacted by the statutes in *Stanley* and *Vlandis* are vastly different , the cases are entirely consistent in their due process analysis. Both hold that due process under the Fourteenth Amendment does not permit proceeding by presumption, where the presumption is not necessarily true and where reasonable alternative means of factual determination are available. In the case at bar, it is evident that there is no necessary or universal truth to the presumption that psychiatric injury claims not predicated on prior physical injury all lack merit. In addition, it is readily apparent that the petitioner herein, no less than the unwed

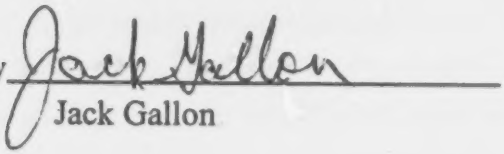
father in *Stanley*, may be able to prove her case, if given the opportunity to present it. Finally, there can be no dispute that the state has readily available alternative means of assuring that spurious claims are not compensated. As noted above, this matter was pending in a trial court prior to the entry of dismissal based on Revised Code *sec.* 4123.01(C)(1). But for the operation of the conclusive presumption erected by such statute, the state's interest in assuring the payment of only meritorious claims would have been protected in this case by a means at least as old as Magna Carta: petitioner would have been put to her proof in a trial by a jury of her peers. Surely, such must be seen as a reasonable alternative arbitrary legislative presumption.

There can be no doubt that the statute challenged in this cause would in some instances serve to prevent not only the allowance of meritless claims, but also the consumption of administrative and judicial resources which would inevitably occur if the matters were fully heard on their merits. As the facts of the present case tragically attest, however, it is equally evident that this statute denies the opportunity to be heard to many citizens who, like this petitioner, could establish meritorious claims , if only they were permitted to try. It was perhaps with people such as this petitioner in mind that Mr. Justice White reminded us in his opinion for this Court in *Stanley* that "The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the constitution recognizes higher values than speed and efficiency..."

CONCLUSION

The foregoing analysis demonstrates that the operation of Ohio revised Code *sec.* 4123.01(C)(1) is in contravention of both the equal protection and due process clauses of the Fourteenth Amendment, and its application to the case at bar has deprived this petitioner of rights secured to her thereunder. For these reasons, a writ of certiorari should issue to review the judgment of the Ohio Supreme Court.

Respectfully submitted,
GALLON & TAKACS CO., L.P.A.

By 
Jack Gallon

APPENDIX

APPENDIX

INDUSTRIAL COMMMISSION OF OHIO	RECORD OF PROCEEDINGS
Claim No. 91-26591	
CHRISTINA S BELL 1109 WILARD NAPOLEON OH 43545	GALLON & TAKACS CO. LPA 3161 N REPUBLIC BLVD TOLEDO OH 43615
STERLING MILK CO. 126 W WASHINGTON NAPOLEON OH 43545	LOSS CONTROL SYSTEMS, INC. PO BOX 12610 COLUMBUS OH 43212 LAW DIRECTOR, BWC
DATE OF INJURY: 2/18/91 DATE OF DISABILITY	RISK NUMBER: 0097618 MANUAL NUMBER: 2063

This matter came on for hearing on October 25, 1991, before District Hearing Officer David C. McGill on the Allowance of Claim filed September 13, 1991. Notices were mailed to the claimant, the employer, their respective representatives, and the Administrator of the Bureau of Workers' Compensation not less than 14 days prior to this date. The following were present

at the hearing:

FOR THE CLAIMANT: Claimant, Mr. Mezinko, Atty and Mr. Clark
FOR THE EMPLOYER: Ms. Mollen and Mr. Gibbs
FOR THE ADMINISTRATOR: Mr. Gabriel, Atty.

It is the finding of the District Hearing Officer that the claimant did not sustain an injury in the course of and arising out of employment.

There is no physical injury.

Claimant sustained psychological injuries only in the incident of 2/18/91.

Under current Ohio law, a claim cannot be based soley on psychological injuries.

Therefore, this claim is hereby disallowed.

This decision is based on the medical reports of Dr.(s) Shahid and Cautin.

CC: Claimant/Employer/Law Director, BWC
Claimant Rep(s): Gallon & Takacs Co., L.P.A.
Employer Rep(s): Loss Control Systems, Inc.

The order herein is based on the claimant's application, evidence in the file and/or evidence adduced at the hearing.

An Appeal (OIC-3000) from this order may be filed within 20

days of the receipt of the order. The Appeal should be sent to the Industrial Commission of Ohio, P.O. Box 776, Toledo, Ohio 43695 or One Government Center, Suite 1233, Jackson and Erie Streets, Toledo, Ohio 43604

David C. McGill
DISTRICT HEARING OFFICER

DATE TYPED: 10/25/91 kes (10/1/91)
NCRWP3 Revised 2/86

INDUSTRIAL COMMMISSION OF OHIO
TOLEDO REGIONAL BOARD OF REVIEW

Claim No. 91-26591

Christina S Bell
1109 Willard
Napoleon, Ohio 43545

Gallon & Takacs
3161 N Republic Blvd
Toledo, Ohio 43615

Loss Control Systems
P.O. Box 12610
Columbus, Ohio 43212

Sterling Milk Company
126 W Washington
Napoleon, Ohio 43545

LAW DIRECTOR, BWC

DATE OF INJURY: 2/18/91
DATE OF DISABILITY:

RISK NUMBER: 0097618
MANUAL NUMBER: 2063
DATE OF DEATH:

This matter came on for hearing December 18, 1991, before the Regional Board of Review on the Claimant's Appeal from the order of the District Hearing Officer dated October 25, 1991. Notices were mailed to the claimant, the employer, their respective representatives, and the Administrator of the Bureau of Workers' Compensation not less than 14 days prior to this date. The following were present at the hearing:

FOR THE CLAIMANT: Theodore Bowman, claimant
FOR THE EMPLOYER: David Kaderavek, Rick Gibbs

FOR THE ADMINISTRATOR:

A prehearing conference having been dispensed with, it is the finding of the Board that the claim has been previously disallowed.

The order here is based on the claimant's appeal, evidence in the file and/or evidence adduced at the hearing.

This action based on a Motion by Mrs. Shelt, seconded by Mrs. Gillmor and voted on as follows: The Board affirms the District Hearing Officer's Order of October 25, 1991.

A.R. Baldwin	NO
CHAIRMAN	(Yes or No)
Karen L. Gillmor	YES
MEMBER	(Yes or No)
Carolyn A. Shelt	YES
MEMBER	(Yes or No)

An Appeal (OIC-3000) May be filed within 20 days of the receipt of this order.

ENTERED AT TOLEDO, OHIO

DATE: DECEMBER 18, 1991

DATE RECEIVED: 10-31-91

ncrwp (RB-1) Revised 3/86

I N D U S T R I A L COMMMISSION OF OHIO	Record of Proceedings
Claim No. 91-26591	
CHRISTINA S BELL 1109 WILARD NAPOLEON OH 43545	GALLON & TAKACS CO. LPA 3161 N REPUBLIC BLVD TOLEDO OH 43615
STERLING MILK CO. 126 W WASHINGTON NAPOLEON OH 43545	LOSS CONTROL SYSTEMS, INC. PO BOX 12610 COLUMBUS OH 43212
	LAW DIRECTOR, BWC
	I/C MANAGEMENT PLANNING
DATE OF INJURY: 2/18/91	RISK NUMBER: 0097618 MANUAL NUMBER: 2063

This matter came for hearing on November 18, 1992, before Staff Hearing Officers Alexander S. Kocsis and John Havener as provided in Ohio Revised Code 4121.35(B)(6) on the Appeal of the claimant filed January 22, 1992 which is an Appeal from the finding and order of the Toledo Regional

Board of Review dated December 18, 1991. Notices were mailed to the claimant, the employer, their respective representatives, and the Administrator of the Bureau of Workers' Compensation not less than 14 days prior to this date. The following were present at the hearing:

FOR THE CLAIMANT: Claimant and Mr. Mezinko
FOR THE EMPLOYER: Ms. Mollen
FOR THE ADMINISTRATOR: None

It is the finding of the Staff Hearing Officers that a pre-hearlng conference would serve no useful purpose and it is therefore dispensed with.

This claim has been previously disallowed.

It Is the order of the Staff Hearing Officers that the said claimant's Appeal be denied, and the finding and Order of the Regional Board be affirmed for the reason that it is supported by proof of record and ls not contrary to law.

The finding and order is based on the evidence in the file and/or evidence adduced at the hearlng.

CC: Claimant/Employer/Law Director, BWC
Claimant Rep(s): Gallon & Takacs Co., LPA
Employer Rep(s): Loss Control Systems, Inc.

DATE TYPED: 11/18/92 kes Alexander S. Kocsis
STAFF HEARING OFFICER
John Havener
STAFF HEARING OFFICER

NCRWP(SHO-3 ORDER) ORDER1 Revised 6/86

IN THE COURT OF COMMON PLEAS,
HENRY COUNTY, OHIO

Christina Bell Connors Plaintiff	* Case No. 93 CV 010
vs.	* JOURNAL ENTRY
Sterling Milk Company, et al.	*
Defendant.	*

This matter came on before the court on a motion to dismiss pursuant to Civ. R. 12(B)(6) filed by the defendant Wesley Trimble, Administrator, Bureau of Workers' Compensation, and joined in by defendant Sterling Milk Company. Upon consideration thereof, the court finds that plaintiff's complaint fails to state a claim upon which relief can be granted and, pursuant to Civ. R. (12)(B)(6), must be dismissed.

Plaintiff argues that a mental disorder or condition without physical injury is compensable. Defendants argue that a mental disorder or condition, without physical injury, is not compensable under the Ohio Workers' Compensation act R.C. 4123.01(C)(1). Rambaldo v. Accurate Die Casting (1992), 65 Ohio St. 3d 281 clearly supports defendants' position. The statute specifically excludes from coverage the injuries for which plaintiff seeks compensation.

Plaintiff argues that the definition of injury set forth in R.C. 4123.01(C)(6) and the 1986 amendment, R.C. 4123.01(C)(1), which specifically excludes "psychiatric conditions except where the conditions have arisen from an injury or occupational disease," are unconstitutional. Plaintiff

argues the Article II, Section 35 of the Ohio Constitution places a limit on the power of the General Assembly to -enact statutory provisions unconstitional with the Constitution of Ohio.

Plaintiff contends that "injuries" as used in the Ohio Constitution includes psychiatric injuries such as that suffered by plaintiff. The court does not agree. R.C. 4123.01(C)(1) is consistent with Article II, Section 35 of the Ohio Constitution. Rambaldo, supra.

Plaintiff also argues that R.C. 4123.01(C)(1) violates equal protection and due process of law. A review of the cases cited by plaintiff fails to establish that plaintiff is being denied equal protection of the law. Plaintiff has failed to establish that "no rational basis" exists for defining injury to require a physical injury in order to receive compensation.

Due process of law does not prevent a court from dismissing an action for failure to state a claim upon which relief can be granted. The plaintiff filed her complaint. Defendant has raised a defense that plaintiff has failed to state a claim upon which relief can be granted. This court heard oral arguments and gave counsel the opportunity to argue their positions. Plaintiff's claim that she has been denied her rights of due process of law by the court and/or the General Assembly are without merit.

It is therefore ORDERED, ADJUDGED, and DECREED that plaintiff's complaint be and hereby is dismissed.

Costs to plaintiff.

/s/ Kenneth A. Rohrs
Kenneth A. Rohrs
Judge

cc: Theodore A. Bowman, Alan Eakins, Duard Ballard

IN THE COURT OF APPEALS OF THE
THIRD APPELLATE JUDICIAL DISTRICT OF OHIO
HENRY COUNTY

CHRISTINA BELL CONNORS	:	CASE NUMBER 7-93-12
	:	JOURNAL
PLAINTIFF-APPELLANT		ENTRY
	:	
v.		
	:	
THE STERLING MILK COMPANY,: ET AL.	:	
DEFENDANT-APPELLEES	:	

For the reasons stated in the opinion of this Court rendered herein on November 4, 1993, the assignments of error are overruled, and it is the judgment and order of this Court that the judgment of the Court of Common Pleas of Henry County is affirmed at the costs of the appellant for which judgment is rendered and that the cause be remanded to that court for execution.

It is further ordered that the Clerk of this Court certify a copy of this judgment to that court as the mandate prescribed by Appellate Rule 27 or by any other provision of law, and also furnish a copy of any opinion filed concurrently herewith directly to the, trial judge.

COURT OF APPEALS
HENRY COUNTY, OHIO
THIRD APPELLATE DISTRICT

CHRISTINA BELL CONNORS

PLAINTIFF-APPELLANT CASE NUMBER 7-93-12

v.

THE STERLING MILK COMPANY, ET AL. OPINION

DEFENDANT-APPELLEES

CHARACTER OF PROCEEDINGS: Administrative Appeal from Common Pleas Court.
JUDGMENT: Judgment affirmed.
DATE OF JUDGMENT ENTRY: November 4, 1993.

{List of Attorneys ommitted during printing)

Case No. 7-93-12

HADLEY J. This is an appeal by Plaintiff-Appellant, Christina Bell Connors, ("Connors") from the judgment of the Common Pleas Court of Henry County in favor of Defendants Appellees, Sterling Milk Company ("Sterling Milk Co.") and Wes Trimble, Administrator, Bureau of Workers' Compensation ("Workers' Comp.").

On February 18, 1991, at approximately 6:30 a.m., a

masked assailant entered Connors' place of employment, Sterling Milk Company, located at 126 W. Washington, Napoleon, Ohio. The assailant ordered Connors by gun point to out of the store. Once outside, the assailant and walked down the block and into an alley. Connors was then told to kneel next to the dumpster. The assailant then stood in front of Connors and placed his gun on the top of the dumpster. He told Connors to perform oral sex on him. When Connors refused, he lowered his pants and began masturbating. Prior to ejaculation, the assailant placed Connors hands on his penis and forced her to perform oral sex. The assailant then walked out of the alley. Connors went back into the store and called the police.

Connors continued her employment at Sterling Milk Co after the sexual assault.[1] During this time, Connors experienced flashbacks of the sexual assault and acutecrying spells. On June 8, 1991, Connors was admitted to Fulton County Health Center for six days. She was diagnosed as suffering from post-traumatic stress disorder and depression as a direct and proximate cause of the sexual assault.

On February 18, 1991, Connors filed an application for benefits with Workers' Comp. The district hearing officer denied her claim on October 21, 1991. Connors then appealed to the Toledo Regional Board which denied her claim on December 18, 1991. Connors appealed to the Industrial Commission. Her claim was denied on November 18, 1992. Consequently, Connors filed her notice of appeal in the Common Pleas Court of Henry County on February 10, 1992.

---

[1]Following Connors hospitalization, she was discharged from her employment with Sterling Milk Co. on June 20, 1991.

Sterling Milk Co. and Workers' Comp. filed a Civ.R. 12(B)(6) motion to dismiss Connors' complaint for failure to state a claim upon which relief can be granted. On June 23, 1993, the trial court granted Sterling Milk Co. and Workers' Comp.'s motion to dismiss. It is from this judgment that Connors now appeals and asserts the following three assignments of error.

ASSIGNMENT OF ERROR NO. I

> The trial court erred to the prejudice of the Plaintiff-appellant in granting defendant-appellee's motion to dismiss for failure to state a claim upon which relief can be granted for the reason that defendant-appellees motion to dismiss is predicated upon a statutory classification of psychiatric injuries which is unconstitutional in light of Article II, Section 35 of the Ohio Constitution.

ASSIGNMENT OF ERROR NO. II

> The trial court erred to the prejudice of the plaintiff-appellant in granting defendant-appellee's motion to dismiss for failure to state a claim upon which relief can be granted for the reason that defendant-appellee's motion to dismiss is predicated upon a statutory classification of psychiatric injuries which is unconstitutional in light of the equal protection clauses of the Ohio and United States Constitution.

ASSIGNMENT OF ERROR NO. III

> The trial court erred to the prejudice of

the plaintiff-appellant in granting defendant-appellee's motion to dismiss for failure to state a claim upon which relief can be granted for the reason that defendant-appellee's motion to dismiss is predicated upon a statutory classification of psychiatric injuries which is unconstitutional in light of the due process clause of the Ohio and United States Constitution.

Appellant argues that the workers' compensation statutes are unconstitutional because psychiatric injuries without contemporaneous physical or traumatic injury are not covered. Appellant's arguments are without merit.

R.C. 4123.01(C)(1) defines injury as:

"Injury" includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment.

"Injury" does not include:

(1) Psychiatric conditions except where the conditions have arisen from an injury or occupational disease.

In Rambaldo v. Accurate Die Casting (1992), 65 Ohio St.3d 281, syllabus, the Court stated:

In the absence of a clearly defined expressed legislative intent to recognize mental conditions caused solely by work-related stress as occupational diseases within the purview of theWorkers' Compensation Act, such mental conditions are not compensable as occupational

diseases.

In the case sub judice, Connors admits that she did not suffer any contemporaneous physical injury from the sexual assault. Furthermore, Connors does not allege that she suffered any traumatic injury from the sexual assault.

Connors argues that no rational basis exists to justify the disparate treatment between physical work-related injuries and mental work-related injuries without contemporaneous physical injury and therefore, the denial of benefits under the worker' compensation violates the equal protection clause and is a denial of due process under the United States Constitution and the Ohio Constitution. Connors arguments are without merit.

The United States Supreme Court in Dandridge v. Williams (1970), 397 U.S. 471, 485, held that: In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. Absent a suspect or fundamental classification, a statute will not be overruled unless the varying treatment of different groups or persons-is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational. Vance v. Bradley (1979), 440 U.S. 93, 97.

As Connors does not assert that she falls within a suspect or fundamental classification, the appropriate standard of review is the rational basis test (the law will be upheld if it is rationally related to a legitimate government interest).

In applying the rational basis test we find that the exclusion for mental or emotional stress in the absence of contemporaneous physical or traumatic injury under Workers' Compensation Act, does not violate the Equal Protection

Clause or the Due Process Clause of the United State's Constitution or the Ohio Constitution for the following reasons: (1) the state has a legitimate interest in maintaining the self-supporting nature of its Worker's Compensation Fund; (2) the state has a legitimate interest in distributing the available resources to the disabilities determined by the state to be covered rather than to cover 211 disabilities inadequately; and (3) the state has a legitimate interest in maintaining a contribution rate at 2 level that will not unduly burden participating employers. See, also, Geduling v. Aiello (1974), 417 U.S. 484; Rose v. Mayfield (1984), 20 Ohio App.3d 300; Zaricki v. Laco Die Casting (July 8, 1982), Cuyahoga County App. No 44254, unreported; Neil v.Mayfield (July 22, 1988), Montgomery County App. No. CA 10881, unreported; and Fields v. City of Youngstown (May 30, 1989), Mahoning County App. No. 88 C.A. 89, unreported.

Connors also argues that the General Assembly exceeded its scope of authority in defining injury pursuant to 4123.01(C)(1) to exclude psychiatric injury without contemporaneous physical or traumatic injury from coverage under Workers' Compensation in contravention of Article II, Section 35 of the Ohio Constitution.

Article II, Section 35 (Workmen's [Workers'] Compensation) of the Ohio Constitution, in pertinent part states:

> For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state,

determining the terms and conditions upon which payment shall be made therefrom * * *

The purpose of Article II, Section 35 of the Ohio Constitution is to compensate workers and/or their dependents for injuries arising out of the course of employment. However, Section 35 does give the state the authority to determine what injuries are compensable.

Whereas the state has a legitimate interest in maintaining and determining what disabilities are compensable under Workers' Compensation, Connors' assignments of error two and three are overruled. Furthermore, as Article II, Section 35 grants the state the authority to determine the terms and conditions of payment under Workers' Compensation, the General assembly did not exceed its authority by excluding psychiatric injuries without contemporaneous physical or traumatic injury as not compensable. Therefore, Connors' first assignment of error is overruled and the judgment of the trial court is affirmed.

Judgment affirmed.

SHAW and BRYANT, JJ., concur.

THE SUPREME COURT OF OHIO

1995 TERM

To wit: May 3, 1995

Christina Bell Connors,	:	Case No. 93-2582
Appellant,	:	
v.	:	JUDGMENT ENTRY
The Sterling Milk Company		:
et al.,	:	APPEAL FROM THE
Appellees.	:	COURT OF APPEALS

This case, here on appeal from the Court of Appeals for Henry County, was considered in the manner prescribed by law. On consideration thereof, the appeal is dismissed, sua sponte, as having been improvidenty allowed, consistent with the opinion rendered herein.

It is further ordered that the appellees recover from the appellant thier costs herein expended; and that a mandate be sent to the Court of Common Pleas for Henry County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Henry County for entry.

COSTS:
Docket Fee, $40.00, paiy by Gallon & Takacs Co., L.P.A.
(Henry County Court of Appeals; No. 79312)

THOMAS J MOYER
Chief Justice

THE SUPREME COURT OF OHIO

1995 TERM

To wit: June 14, 1995

Christina Bell Connors,	:	Case No. 93-2582
Appellant,	:	
v.	:	RECONSIDERATION ENTRY
The Sterling Milk Company		:
et al.,	:	(Henry County)
Appellees.	:	

IT IS ORDERED by the Court that reconsideration in this case be, and the same is hereby denied.

(Court of Appeals No. 79312)

THOMAS J MOYER
Chief Justice

IN THE SUPREME COURT OF OHIO

APPEAL FROM THE COURT OF APPEALS,
THIRD APPELLATE D I DISTRICT CT

CHRISTINA BELL CONNORS,	:	
Plaintiff-Appellant,	:	
v.	:	Case No. 93-2582
THE STERLING MILK	:	
COMPANY, et. al.	:	
Defendants-Appellees	:	

BRIEF OF AMICUS CURIAE
OHIO PSYCHOLOGICAL ASSOCIATION

[List of Attorneys and Table of Contents ommitted during printing]

STATEMENT OF THE CASE

Amicus Curiae, Ohio Psychological Association, hereby adopts the Statement of the Case set forth in the brief of Appellant, Christina Bell Connors, submitted to this Court.

STATEMENT OF FACTS

Amicus Curiae, Ohio Psychological Association, hereby adopts the Statement of Facts set forth in the brief of Appellant, Christina Bell Connors, submitted to this Court.

ARGUMENT

Proposition of Law

R.C. 4123.01(C)(1) CONFLICTS WITH THE EQUAL PROTECTION AND DUE PROCESS OF LAW REQUIREMENTS OF THE OHIO AND UNITED STATES CONSTITUTIONS, AND WITH THE WORKERS' COMPENSATION REQUIREMENTS OF ARTICLE II, SECTION 35 OF THE OHIO CONSTITUTION, BY PRECLUDING COMPENSATION TO INDIVIDUALS SUFFERING MENTAL INJURIES UNLESS SUCH INJURIES CAUSALLY RELATE TO WORK-RELATED PHYSICAL INJURIES.

Amicus Curiae, Ohio Psychological Association ("OPA"), is the statewide professional association in Ohio for psychologists. Formed in 1949, it now consists of over 1400 psychologists who work in practice settings, both private and public, in government agencies, such as community health centers, the Ohio Department of Mental Health, the Ohio Department of Rehabilitation and Corrections, and the Ohio Industrial Commission, in a variety of consulting arrangements, in hospitals, and in universities.

OPA strongly urges this Court to strike down the provision of Ohio's Workers' Compensation law which denies compensation to an individual, such as Appellant herein, who

has suffered a serious mental injury arising out of employment, but in the absence of a concurrent work-related physical injury, namely, R.C. 4123.01(C)(1). As Appellant asserts, their law should be ruled unconstitutional by this Court on the grounds that it is inconsistent with Article II, Section 35 of the Ohio Constitution, and with the Equal Protection and Due Process of Law protections of both the Ohio and United States Constitutions.

In Rambaldo v. Accurate Die Casting (1992), 65 Ohio St. 3d 281, at 289, Justice Brown eloquently stated in his concurring opinion that

> .... Mental disability is real. It can be more disabling than many physical injuries and occupational diseases which are now compensated. Who, for example believes that a carry-out clerk who suffers mental disability from being threatened, perhaps shot at and missed by a robber. should not be compensated?

Amicus Curiae, OPA, wholeheartedly agrees with these sentiments which are fully supported by its collective experience in diagnosing and treating individuals throughout Ohio who suffer from various forms of mental injuries and diseases, such as Appellant herein who was victimized with Post traumatic Stress Disorder (PTSD - 309.81 DiagnosticMental Statistical Manual of mental Disorders IV - copy attached as Appendix C) stemming from a work-related sexual assault perpetrated against her.

The scientific literature pertaining to mental injuries provides no rational basis for the current distinction expressed in R.C. 4123.01(C)(1), i.e., between mental injuries which are caused by physical injuries or diseases and those which are entirely psychological in origin. There is little, if anything,

contained in this vast literature in support of the implicit statutory assumption that the former are more serious than the latter or that the former are more reliably verifiable than the latter. Moreover, the overall validity and reliability of mental injury diagnoses, regardless of physical or psychological causes, has been well established in recent years (Matarazzo, Joseph D., "The Reliability of Psychiatric and Psychological Diagnosis", Clinical Psychology Review, Vol. 3, pp. 103-145 (1983)).

In the area of tort law, this Court has expressly rejected the distinction between mental injuries caused by physical factors and those caused by psychological factors, Schultz v. Barberton Glass Co. (1983), 4 Ohio St. 3d 131. Using words fully applicable in the instant workers' compensation context, the Court therein opined that "Emotional injury can be as severe and debilitating as physical harm and is deserving of redress, " Schultz, supra, Ohio St. 3d, at 135.

In light of this, as well as the total lack of any scientific evidence in support of R.C. 4123.01(C)(1), the distinction contained in that statutory provision makes no more sense than would a decision by the legislature to deny workers' compensation to individuals injured on Mondays as opposed to the remainder of the workweek. Striking down such a disparity of treatment by the legislature on traditional constitutional grounds would not require this Court to issue "a sweeping public-policy statement," Rambaldo. supra, 65 Ohio St. 3d, at 288. Nor would it risk imposing a "staggering burden ... upon the State Insurance Fund and the rates which would be assessed against employers," Rambaldo, supra, 65 Ohio St. 3d, at 289.

All it would do, instead, is to prevent the legislature from using classifications and distinctions - e.g., "mental" versus "physical" injuries, "Monday" versus "Friday" injuries

- which bear no rational relationship to furthering any legitimate governmental purpose. Any such potential adverse consequences as cited in Rambaldo, supra, are fully amenable to legislative solutions based upon rational workers' compensation classifications.

In sum, it is hard to see how the requirements of Equal Protection and Due Process of Law could more clearly compel invalidation of a statutory provision than in the case now presented to this Court by Appellant with respect to R.C. 4123.01(C)(1). For all the reasons set forth in this brief and in Appellant's Brief, this Court should strike down that statutory provision as repugnant to both the Ohio and United States Constitutions.

Respectfully submitted

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(2)

Supreme Court, U.S.
FILED
OCT 12 1995
CLERK

No. 95-381

In The

Supreme Court of the United States

October Term, 1995

CHRISTINA BELL CONNORS,

Petitioner,

vs.

THE STERLING MILK COMPANY and WEST TRIMBLE, ADMINISTRATOR OHIO BUREAU OF WORKERS' COMPENSATION,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Ohio

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Jan H. Schut, *From the Folks Who Brought You the Hot Tub,* Institutional Investor, Oct. 1991, at 171 4

Bradley J. Fikes, *Stress Workers' Claims Drop, Problems Remain,* San Diego Bus. J., Sept. 23, 1991, at Vol. 12, No. 37, Sect. 1, p. 15 4

Donna K.H. Walters, *Workers' Comp Reforms Fail to Quell Discontent,* L.A. Times, Mar. 17, 1991, at D1 4

Angela K. Calise, *Lawyers Seen to Spur Stress Claims,* National Underwriter, Property & Casualty/Risk & Benefits Mgmt. Edition, April 18, 1994, at 9 4

STATEMENT OF THE CASE

Respondent is satisfied with the Statement of the Case presented in Petitioner's Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT OF CERTIORARI

I. Ohio Revised Code § 4123.01(C)(1) Does Not Contravene the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Pursuant to Ohio Rev. Code § 4123.01(C)(1), a compensable "injury" under Ohio's workers' compensation laws does not include "[p]sychiatric conditions except where the conditions have arisen from an injury or occupational disease." Therefore, if a psychiatric condition arose from a physical injury or occupational disease, it is compensable under Ohio Rev. Code § 4123.01(C)(1). However, a purely psychiatric injury, not occasioned by physical injury or occupational disease, is not compensable and has never been recognized as a compensable injury under Ohio law. *Rambaldo v. Accurate Die Casting*, 65 Ohio St.3d 281, 283; 603 N.E.2d 975, 977 (1992); *Ryan v. Connor*, 28 Ohio St.3d 406, 409; 503 N.E.2d 1379, 1381 (1986).

Petitioner argues that the classification enunciated in Ohio Rev. Code § 4123.01(C)(1) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Petitioner's argument is wholly without merit.

The standard of review for an equal protection claim depends on whether the relevant right is a fundamental right, or whether the relevant class is a suspect class. In the instant case, both parties agree that the relevant standard of review is encompassed in the "rational basis" test because the classification does not burden a suspect group or a fundamental interest. *Vance v. Bradley*, 440 U.S. 93, 97 (1979).

This Court has held that "[i]n the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." *Daindridge v. Williams*, 397 U.S. 471, 485 (1970). Under the rational basis test, in order for Ohio Rev. Code § 4123.01(C)(1) to contravene the Equal Protection Clause, "the varying treatment of different groups or persons [must be] so unrelated to the achievement of any combination of legitimate purposes that [the Court] can only conclude that the legislature's actions were irrational." *Vance*, 440 U.S. at 97.

In *Fields v. Youngstown*, No. 88 CA 89, unreported, 1989 Ohio App. LEXIS 1964 (7th Dist., May 30, 1989), the Ohio Court of Appeals upheld the constitutionality of Ohio Rev. Code § 4123.01(C)(1) in the face of an equal protection attack because it determined that it furthered one or all of the following legitimate legislative objectives:

1. The State has a legitimate interest in maintaining the self-supporting nature of the workers' compensation fund;

2. The State has a legitimate interest in distributing the available resources in a manner that keeps

benefit payments at an adequate level for injuries that are covered; and

3. The State has a legitimate concern in maintaining the contribution rate at a level that will not unduly burden participating employers.

Id. at *8. Several other Ohio Appellate courts have reiterated this ruling. *See e.g., Zaricki v. Lace Die Casting,* No. 44254, slip opinion at p. 4 (8th Dist., July 8, 1982); *Duty v. Connor,* No. 44164, slip opinion at p. 12 (8th Dist., September 2, 1982); *Neil v. Mayfield,* No. CA 10881, unreported, 1988 Ohio App. LEXIS 2979 (2nd Dist., July 22, 1988).

The Supreme Court of Montana has also recently rejected an equal protection challenge on a comparable workers' compensation statute. In *Stratemeyer v. Lincoln Cty.,* 259 Mont. 147; 855 P.2d 506 (1993), the Supreme Court of Montana considered the constitutionality of a workers' compensation statute which, as under Ohio Rev. Code § 4123.01(C)(1), did not compensate purely psychological injuries. 855 P.2d at 508; 259 Mont. 147. The Court upheld the validity of the Montana Statute ruling, in pertinent part, that "the classification at hand rationally relates to a legitimate governmental objective of controlling the costs of the program and providing benefits." 855 P.2d at 511; 259 Mont. 147.

In addition, it cannot be disputed that Ohio Rev. Code § 4123.01(C)(1) does in fact further the aforementioned legitimate legislative objectives. In 1981, a California law took effect which compensated workers for a purely mental condition so long as the condition was at least ten percent (10%) work related. Ten years later, the number of state reported pure psychiatric claims had

risen seven-hundred percent (700%). Jan H. Schut, *From the Folks Who Brought You the Hot Tub,* Institutional Investor, Oct. 1991, at 171. Not surprisingly, in 1991, California employers paid the second highest workers' compensation rates in the nation. Specifically, employers, on average, pay $3.08 per $100 which is 53% higher than employers nationwide. Bradley J. Fikes, *Stress Workers' Claims Drop, Problems Remain,* San Diego Bus. J., Sept. 23, 1991, at Vol. 12, No. 37, Sect. 1, p. 15.

California workers' compensation law is also causing businesses to move out of California, or to avoid locating in California. Donna K.H. Walters, *Workers' Comp Reforms Fail to Quell Discontent,* L.A. Times, Mar. 17, 1991, at D1. One of California's largest workers' compensation insurers, Industrial Indemnity, "says [it is] impossible to do business [in California] because there is too much litigation, medical costs are too high and expensive mental stress claims are skyrocketing." *Id.* Small businesses are having a difficult time paying workers' compensation rates, and worry that they may be forced out of the area. Tim Trujillo, owner of a small roofing company, stated that he pays close to $40 for workers' compensation insurance for every $100 he pays for salary. *Id.*

Recognition of purely psychological injuries as a compensable injury under the workers' compensation laws also leads to an increase in litigation. Purely psychological injuries are more likely to be contested, more difficult to prove, more difficult to defend, and more expensive to compensate because the average psychiatric claim takes thirty-nine (39) weeks to resolve whereas the average traumatic injury takes twenty-four (24) weeks to resolve. Angela K. Calise, *Lawyers Seen to Spur Stress*

Claims, National Underwriter, Property & Casualty/Risk & Benefits Mgmt. Edition, April 18, 1994, at 9.

Respondent submits that the aforementioned authority aptly demonstrates that Ohio Rev. Code § 4123.01(C)(1) clearly furthers one of three legitimate legislative objectives, and therefore, does not contravene the Equal Protection Clause.

II. Ohio Revised Code § 4123.01(C)(1) Does Not Violate the Due Process Guarantees of the Fourteenth Amendment to the United States Constitution.

Petitioner argues that Ohio Rev. Code § 4123.01(C)(1) violates the Due Process guarantees of the Fourteenth Amendment to the United States Constitution because it creates an "irrebuttable presumption." Petitioner's argument is wholly without merit.

First, Ohio Rev. Code § 4123.01(C)(1) does not present an "irrebuttable presumption," but rather, a legislative classification. *See, e.g., Kirk v. Secretary of Health and Human Services*, 667 F.2d 524, 533 (6th Cir. 1981) (interpreting new social security medical-vocational guidelines) (citing Note, *The Conclusive Presumption Doctrine: Equal Protection or Due Protection?*, 72 Mich. L. Rev. 800, 827-828 (1974); Note, *Irrebuttable Presumptions: An Illusory Analysis*, 27 Stan. L. Rev. 449, 463 (1975); Note, *The Irrebuttable Presumption Doctrine in the Supreme Court*, 87 Harv. L. Rev. 1534, 1544 (1974). Petitioner cannot attack the validity of Ohio Rev. Code § 4123.01(C)(1) merely by labeling the classification an irrebuttable presumption. *See e.g., Darks v. Cincinnati*, 745 F.2d 1040, 1044 (6th Cir. 1984).

Second, the authority cited by Petitioner, *Stanley v. Illinois*, 405 U.S. 645 (1972) and *Vlandis v. Kline*, 412 U.S. 441 (1973) is not relevant to the instant case because the instant case does not implicate a constitutionally protected interest or status. *Weinberger v. Salfi*, 422 U.S. 749, 770-772 (1974). This Court has made it abundantly clear that in the realm of social welfare, a statutory classification does not enjoy a constitutionally protected status. *Id.* at 772. Therefore, in order to withstand scrutiny under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the classification may not invidiously discriminate on the basis of a "bare congressional desire to harm a politically unpopular group," *U.S. Dep't of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973), or "on the basis of criteria which bear no rational relation to a legitimate legislative goal." *See e.g., Weinberger*, 422 U.S. at 772.

Respondent has presented this Court with overwhelming evidence that Ohio Rev. Code § 4123.01(C)(1) is rationally related to a legitimate legislative goal in its previous argument, and therefore, for the sake of brevity, it will not reiterate that argument here.

CONCLUSION

In pertinent part, the Court will consider granting a writ of certiorari when "a state court of last resort has decided a federal question in a way that conflicts with a decision of another state court of last resort or of a United States court of appeals," or when "a state court . . . has decided an important question of federal law which has

not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." Rule 10(1)(b) and (c) of the Supreme Court. These considerations do not pertain to the instant case.

Ohio Rev. Code § 4123.01(C)(1) represents a policy decision of the Ohio legislature that a purely psychiatric injury is not a compensable injury under Ohio's workers' compensation laws. California's "experiment" with compensating purely psychiatric injuries demonstrates that this statutory classification is rationally related to any one of three legitimate legislative goals: (1) maintaining the self-supporting nature of the fund; (2) distributing the available resources in a manner that keeps benefit payments at an adequate level for injuries that are covered; and (3) maintaining the contribution rate at a level which will not unduly burden participating employers. Therefore, under the current law of the Court, Ohio Rev. Code § 4123.01(C)(1) withstands scrutiny under an equal protection and due process analysis.

If the Court were to intervene in Ohio's policy decision by granting the instant petition, "[t]his would represent a degree of judicial involvement in the legislative function which [the Court has] eschewed except in the most unusual circumstances, and which is quite unlike the judicial role mandated by *Dandridge, Belcher,* and *Nestor,* as well as a host of cases arising from legislative efforts to regulate private business enterprises."

Weinberger, 422 U.S. at 773. This is something the Court should not entertain.

Respectfully submitted,

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Supreme Court, U.S.
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No. 95-381

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

CHRISTINA BELL CONNORS,
Petitioner,

v.

THE STERLING MILK COMPANY and WES TRIMBLE, ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION,
Respondents.

On Petition for Writ of Certiorari
to the Supreme Court of Ohio

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondent is satisfied with the Statement of the Case presented in Petitioner's Petition for Writ of Certiorari, but would add that the Petitioner has never alleged that she suffered any physical harm while in the course of her employment on February 18, 1991.

REASONS FOR DENYING THE WRIT

Petitioner assumes that the facts are uncontroverted that her mental condition was solely occasioned in the course of her employment. However, that issue has not been addressed at the trial court level since the matter was disposed of on a motion to dismiss. As an initial matter, it is important to point out that Petitioner has not even alleged or established that the lower courts are divided on the issue of whether the limitation of purely mental injuries violates Equal Protection.

Petitioner's arguments, that the Workers' Compensation law violates equal protection and that the state has no rational basis for legislating such a statutory classification, are without merit. As Petitioner argues, the appropriate standard of review for an equal protection claim is dependent on whether the right is fundamental or the classification is suspect. In the case *sub judice* the appropriate standard of review is encompassed in the "rational basis" test, since the classification does not burden a suspect group or a fundamental interest. *Vance v. Bradley*, 440 U.S. 93, 97 (1979). The denial of coverage for mental disorders based solely upon stress does not violate equal protection of the law. This Court has determined that legitimate state interests can be and are sufficient to permit a state to establish a classification scheme in areas of economic and social legislation. *Geduldig v. Aiello*, 417 U.S. 484 (1974).

In *Dandridge v. Williams*, 397 U.S. 471 (1970), the United States Supreme Court addressed the issue of classification schemes in social and economic legislation.

The Court held that the Equal Protection Clause does not require a state to choose between attacking every aspect of a problem or not attacking the problem at all. As the court noted at 397 U.S. at pg. 485:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." ... "The problems of government are practical ones and may justify, if they do not require, rough accommodations -- illogical, it may be, and unscientific." ... "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." ...

Plainly, there are ample legitimate grounds for Ohio's statutory scheme: (1) the state has a legitimate interest in maintaining the self-supporting nature of its Workers' Comp nsation Fund; (2) the state has a legitimate interest in distributing the available resources to the disabilities determined by the state to be covered rather than to cover all disabilities inadequately; and (3) the state has a legitimate interest in maintaining a contribution rate at a level that will not unduly burden participating employers. *See*, *Connors v. Sterling Milk Co.*, 98 Ohio App.3d 711 (1993) (dismissed as having been improvidently allowed in 72 Ohio St.3d 1208). This test has been applied in other Ohio appellate districts

which have upheld Ohio's ban on purely mental injuries. *Andolsek v. Kirtland*, 99 Ohio App.3d 333 (1994); *Neil v. Mayfield*, No. 10881, unreported (2d App. Dist., July 22, 1988); *Fields v. City of Youngstown*, No. 89, unreported (7th App. Dist., May 30, 1989); *Duty v. Connor*, No. 44164, unreported (8th App. Dist, Sept. 2, 1982). Hence, there exist several "reasonable bases" to support the state's classification scheme. *See generally,* Fred J. Pompeani, *Mental Stress and Ohio Workers' Compensation: When is a Stress Related Condition Compensable?*, 40 Clev. St. L. Rev. 55 (1992).

Based upon the authority cited herein, Ohio Revised Code 4123.01(C)(1) does not violate the Equal Protection Clause of the Fourteenth Amendment. The State of Ohio has a legitimate interest in the maintenance and fair distribution of its workers' compensation fund, and a reasonable basis for denying coverage to workers who allege mental conditions without a contemporaneous physical injury or previously allowed occupational disease.

Further, and in response to Petitioner's second proposition, the irrebuttable presumption analysis is inapplicable in challenges to aspects of social welfare programs. *Jackson v. O'Bannon,* 633 F.2d 329, 339 (3rd Cir. 1980). Ohio Rev. Code Section 4123.01(C)(1) is a legislative classification. Thus, the standard of review remains whether the classification is rationally related to a legitimate state interest, and not whether the statute creates an irrebuttable presumption. As one appellate court has noted: "[C]ongressional judgments in the form of irrebuttable presumptions in the economic area will be upheld where there is a rational relationship between the criteria set forth in the statutory mandate and a legitimate Congressional

purpose." *Sakol v. C.I.R.*, 574 F.2d 694, 698 (2d Cir., 1978), cert. denied, 439 U.S. 859 (1978). The legislature may not invidiously discriminate or legislate on the basis of criteria which bear no rational relation to a legitimate legislative goal. *Weinberger v. Salfi*, 422 U.S. 749, 772 (1975).

As previously stated, however, the State of Ohio has not discriminated in an invidious manner in the maintenance and fair distribution of its workers' compensation fund, and the state has several reasonable bases for denying coverage to workers who allege mental conditions without a contemporaneous physical injury or previously allowed occupational disease.

CONCLUSION

Wherefore, for the above-stated reasons, the Respondents request that this court deny the petition for a writ of certiorari.

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